

rate for the crop year involved. In addition, a commensurate penalty at the same rate may be assessed in cases within the tolerance allowed by the previous sentence in any instance in which the variance is determined to be due to a scheme or device to defeat the purposes of the program, or is repeated. Further, all errors may in all cases result in a commensurate diminution of the quota allowed the farm for the following year.

[61 FR 36999, July 16, 1996, as amended at 62 FR 25438, May 9, 1997]

**§ 729.205 Farms ineligible for farm poundage quota.**

(a) *Ineligible farms.* Except for quota allocated under the provisions of § 729.208 for experimental and research programs, effective beginning with the 1998 crop year, farm poundage quotas shall not be established for farms which are determined by FSA to be owned or controlled by:

(1) Municipalities, airport authorities, schools, colleges, refuges, and other public entities (other than a university used for research purposes).

(2) A person:

(i) Who is not a peanut producer; and  
(ii) Whose primary domicile, as determined by FSA, in the case of any individual is in a State outside the State in which the quota is allocated or, in the case of an entity, does not qualify under this section to be considered to be a resident of the State in which the quota is allocated.

(b) *Determination of residency and related rules.* (1) For purposes of administering paragraph (a) of this section, an entity may be considered a resident of the State in which the quota is located if:

(i) It is determined that a person or persons with at least a cumulative 20-percent interest in any such entity are individuals whose primary residence is in the State in which the quota is allocated; or

(ii) As determined appropriate by the Deputy Administrator, the corporation or other entity, but not a general partnership or an entity not recognized as a separate and distinct legal entity from its members, has been created under the laws of the State in which the quota is allocated.

(2) For purposes of the provisions of (a)(2)(i) of this section, a person shall not be considered to be a producer of a crop of peanuts unless such person is at risk for at least 15 percent of the proceeds from the marketing of the production of the quota at issue.

(c) *Exemption for involuntary acquisition.* Paragraph (a)(2) of this section shall not apply to any involuntary acquisition of a farm by foreclosure, or otherwise, resulting directly from the conduct of a public business in the State in which the quota is allocated, or an acquisition resulting directly by reason of a death. The exemption for involuntary farm acquisitions allowed under the preceding sentence shall only apply to the establishment of quota in the three crop years immediately following the date of the involuntary acquisition of the quota farm.

(d) *Applicable crop year.* For purposes of applying the rules in paragraph (a) of this section as they regard production, the determination of whether paragraph (a)(2) of this section applies shall be made based on the crop last planted before the date on which the determination is to be made.

(e) *Allocating forfeited quota and sales of quotas subject to paragraph (a).* Except for the exemption for involuntary acquisition in § 729.205(c), beginning in 1997 any farm poundage quota held on or after August 1 of 1997 by an ineligible person as determined under paragraph (a) of this section shall be allocated from the quota farm to other farms in the same State in accordance with § 729.206 of this part; provided, however, that if the ineligibility arises solely because of a purchase of a farm after August 1, 1997, or involves a quota which is acquired because of the expiration of a CRP contract after August 1, 1997, the quota shall not be forfeited but may not be used to market peanuts until the ineligibility is determined by the county committee to have been removed or the quota is sold to an eligible farm. Such reallocations shall be made to the extent practicable but shall take into account those instances in which the regulations call for an ineligibility for quota allocation rather than forfeiture of the quota.

[61 FR 37000, July 16, 1996, as amended at 62 FR 25438, May 9, 1997]